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Trends and Impact of Forest Tenure Reforms in Asia: Cases from India, Indonesia, Lao PDR, Nepal and the Philippines

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Abstract: For the last two decades, some countries in Asia have initiated progressive tenure reform in the forestry sector through transfer of management and use rights from the state to the local communities, indigenous groups, local government units, private sector and individual households. However, still around 92% of the forests in South and Southeast Asia are owned by the state, which manages it particularly for revenue generation and protection of environment (FAO 2006). Some of the devolved tenure models such as community forestry in Nepal and the Philippines and joint forest management in India are yielding promising results in terms of forest protection, but the livelihoods of the local communities are not fully recognized yet. Decentralization of forest management rights at household level such as in China, Vietnam and Cambodia is another encouraging model as it contributes to raising the incomes of poor households. However, the security of such rights in legal terms is questionable due to inconsistent policies and legal frameworks. Tenure reforms in Asia have had mixed results so far, but the reforms are heading towards addressing peoples' livelihood needs on the one hand and protecting forest and environment on the other.

Key words: community forestry, decentralization, livelihoods, equity, biodiversity, forest condition.

INTRODUCTION

The type and extent of tenure reform in Asia vary from country to country, although an objective common to each tenure reform is to share the ownership and management rights and engage multiple stakeholders, along with the state, in the use and management of resources. Similarly, reformed tenure in forestry is focusing more on addressing the people's livelihood needs and income while considering the global need for environmental protection and biodiversity conservation. These trends are reflected in the reformed tenure models in many countries in Asia. The existing forest ownership and tenure arrangements in Asia show that decentralization and devolution in forestry is very limited where more than 86% of the forests are under the direct control of the state (FAO 2006). However, the trend indicates that the community tenure model is gradually emerging in most countries in Asia. For example, in China, the forest tenure model has significantly shifted towards decentralization at household level. Almost 52% of China's forests are managed by individual households (Xu and Hyde 2005). Similarly, Vietnam introduced private property rights in forests and established a legal basis for the management of protection forests and forests for special uses. In

general, the government landownership in Asia is the dominant trend, but the degree varies from 100% in Burma to 3% in Papua New Guinea (Potter 2008). In some countries in Asia such as in the Philippines, Indonesia, Cambodia and Malaysia, the national governments still prefer to lease the forestland to private companies for commercial harvesting of timber. However, this trend is decreasing with the increasing role of communities in the management of forests in these countries. In India and Nepal, the changing forest tenure entails greater management and use rights for local communities in the name of Joint Forest Management (JFM) and Community Forestry (CF) respectively, though the forestland remains under the control of the state. In some countries, such as Indonesia and the Philippines, some indigenous communities are using their *de facto* use and management rights over the forest within their domain.

Despite growing recognition of community rights by the state in many countries in Asia, the community-based tenure model is facing a major challenge due to inconsistent government policy and lack of institutional capacity. For example, in Nepal, the government is trying to impose tax on transportation and sale of timber harvested

from community forests. In the Philippines, resource utilization permits given to communities have been suspended many times since 1999. Similarly, in China, the policies on ownership and management have changed four times within a quarter of a century before 1978 (Capistrano 2008).

It is difficult to generalize the impact of different tenure models in Asia under a single common thread, although it is evident that the countries with secure tenure arrangements are getting better results in terms of protection of forest and harnessing of benefits from forest products, particularly for the livelihood of the local people. Studies indicate that a strong tenure right alone is not enough, but it needs to be accompanied by strong institutional capacity to fully utilize the benefits of devolved tenure models.

Against this backdrop, this paper presents a brief scenario of the existing forest tenure models in Indonesia, Nepal, Lao PDR, India and the Philippines and their impact on Livelihoods, Income, Forest Condition and Equity (LIFE).

INDIA

In India, the JFM as a benefit-sharing mechanism between local communities, and the Forest Department has helped the regeneration of degraded forest and established collaboration between the government and forest users. However, the programme's main limitations are its heavy dependence on project funding and the high level of control exercised by the state administration. These raised the question of sustainability, unless the JFM concept can evolve towards more shared decision-making (FAO 2006).

About 96% of the forests in India are owned and managed by the states. The state is the *de jure* owner of all lands, including forestland, other than that owned privately. In terms of managing the forest, all recorded state-owned forests are classified as reserved forests (55%), protected forests (29%) and un-classified forests (16%). Both protected and reserved forests, governed by the Indian National Forest Act 1927, are currently under multiple use management. The protection forest belongs to the Revenue

Department, whereas the reserved forest belongs to the Forest Department. Protected Areas (PAs) alone, governed by the Wildlife Protection Act 1972, contain around 19% of the total forest area in the country with 80 national parks and 450 sanctuaries. There are no recognized customary rights in the PAs. Governed under the National Forest Policy 1988, some 17 million ha of forests in India are being managed by local communities with limited usufruct rights under the JFM; and to a very limited scale, some local communities manage protection forests as a continuation of their *de facto* practice of managing and utilizing forests (FAO 2006).

Most of the state-managed forests, mainly protection forests, around rural communities often have open access. The local people living in the fringes of forests use forests to manage their sustenance. Hence, forests become the only or major source of sustenance of the poorest people. Several studies have shown that forests constitute significantly larger share of household income for landless poor as compared to cultivating non-poor households across various Indian states (Singh *et al.* 2005). However, constant attempts to keep people out of forest management affairs denied and criminalized their traditional access to livelihood resources. On the other, for providing livelihood opportunities, until 1991 large areas of forest were converted to agricultural lands.

Under the JFM framework, local communities continue to collect forest resources which are integral part of their daily lives. But implementation of the JFM would also mean restricted use of forest resources for the people who were solely dependent on forest for their livelihood. Depending upon alternative livelihood options, regulated access to forest under JFM has had differential impact on people. Several studies have analysed how the JFM affected or impacted the livelihood situation of people who normally depend on forest. These studies indicate that relatively poor people have borne more cost than acquiring benefits from the JFM (Matta and Alavalapati 2006).

INDONESIA

In Indonesia, the forest cover is declining rapidly, which is estimated to be around 2 million hectares (ha) per year (FWI/GFW 2002). It poses threat to the livelihoods of 10 million forest-dependent people on the one hand and is causing the loss of rich biodiversity of the Indonesian tropical rain forests on the other (Rhee *et al.* 2004). The main causes of such a rapid decline in forests have been identified as illegal logging and unauthorized forest fires (Contreras-Hermosillo and Fay 2005) caused by poor forest governance, lack of effective laws and regulations, and weak institutional structure (Colchester and Fay 2007). After the enactment of the Basic Forest Law in 1967, almost 74% of Indonesian forests were included under the state forest and classified as 'Forest Estate' (Colfer *et al.* 2002). Forest exploitation became an important source of government income, especially during the economic crisis of the 1980s (Resosudarmo 2005). In this period, permits were issued by the central government to extract high value timber, land clearance for industrial and agricultural purposes, resulting in a loss of 20 million ha of forest cover during the period 1985-97 (FWI/GFW 2002). Most of the logging permits were issued to private and state-owned companies with the consultation of local communities (Colfer *et al.* 2002). In many provinces, forest-dependent communities have been living in and around the forest since time immemorial and have created their own customary laws, management systems and institutions such as *Adat*¹. However, the traditional rights and management practices were largely ignored and communities were hardly given authority to deal with timber concessionaires. This created social tensions and mistrust between local communities and timber concessionaires (Contreras-Hermosillo and Fay 2005). In 1999, the central government initiated decentralization in forest management through transfer of certain roles and responsibilities to district and provincial governments and local communities. However, the process of transferring authority, roles and

¹ *Adat* is one of the customary institution in terms of forest tenure in Indonesia

responsibilities is still not well established (Resosudarmo 2005).

Decentralization in Indonesia could help bring some income to people for short term, that too inequitably distributed. It has surprisingly failed to halt forest degradation (Barr *et al.* 2006). Contrary to the belief that increasing conflicts are an indication of local communities' concern and care about forest and resources, forest degradation has increased with decentralization. In fact, with increasing forest-related conflicts, decentralization has widely been correlated with increasing deforestation. Incidents of forest fire have not stopped even in the decentralized regime (Capistrano 2008). In this period, even formally established forests were destroyed and some lands already claimed by communities were deserted. At present, most claimed lands outside Java lay bare, without any replanting or utilization efforts by the local communities (Siregar *et al.* 2007). According to RECOFTC (2006), a computer simulated projection for 2007-27 shows that if present practices continue, forests in some parts of Indonesia will disappear in 5 to 15 years (5 years in Riau, 10 years in East Kalimantan and 15 years in Papua). Studies indicate that poor outcomes of decentralization in Indonesia are due to poor governance and regulatory framework in implementation.

LAO PDR

All land in Lao PDR is controlled by the state. The Department of Forest under the Ministry of Agriculture and Forest handles forests, issues permits and controls harvesting of forest resources. Government is the sole owner and manager of forest resources in Lao PDR.

The government adopted various forest management policies with different impact on people and forests. Policy thrusts behind forest management have been one of the revenue generation activities (Sunderlin 2006). The economic mechanism adopted in 1986 caused higher level of harvesting and rapid acceleration in exports. Considering policy impact of state-controlled forest causing higher rate of forest degradation, a National Conference on Forestry was organized in 1989 to rethink on existing policies. This conference became the basis for policy shifts towards providing space for

community participation (Manivong and Sophathilath 2007). Since then, attempts have been made to decentralize local resource management, including the management of forest-based resources. Poverty reduction is an overarching agenda of government, and land reform and tenure security are measures adopted to achieve this goal (Ducourtieux *et al.* 2005). Government policies regulating land and forest tenure in Lao PDR can be analysed in four areas as they have direct bearing on LIFE. These four policy arena are: (i) state-controlled logging, (ii) land allocation and land tenure, (iii) CF models, and (iv) Non-Timber Forest Product (NTFP) management.

The current forestry trend in Lao PDR is highly unsustainable (World Bank 2001). As a result of the government policies and practices, forest degradation is high, at 5.6% between 1992 and 2006. The coverage of natural forests has dropped to 41.2% in 2001 from 70% in 1947 and 47% in 1992 (DOF 2003). The density of forests has decreased drastically and forest fragmentation has increased (Phanthanousy and Sayakoummane 2005). With this bleak trend and continuation of existing policy, tenure and institutions, the government's target of expanding 60% of land under forest may remain a distant dream.

The land-forest allocation programme is a major national policy regarding participatory land use planning and land tilling. The impact of land-forest allocation policy has been counter-productive as it has created food insecurity and poverty (Hobley 2007, Sunderlin *et al.* 2007). It has had negative social impact by marginalizing the poorest farmers and adversely affecting the forest condition and agricultural modernization (Ducourtieux *et al.* 2005).

NEPAL

Like other countries in Asia, Nepal also experienced tenure reform over the last two decades, shifting from state control forest tenure to more decentralized community control forest management. CF in Nepal is one of the reformed tenure models which has a long history, and is recognized as one of the successful examples of community-based forest management in Asia. CF represents around 21% of Nepal's total forest area and is legally operating under the

Forest Act 1993. Various studies have indicated that, as a result of community forestry, the condition of forests has improved considerably and degradation has been reduced (Singh and Singh 2006). Despite some achievements, CF in Nepal suffers from many limitations. One of the major limitations is 'elite capture' in terms of exercise of devolved power at local level and sharing of benefits among the members of forest user groups.

Until recent decades, state as the owner of all kinds of land, barring private agricultural land, used forest as a means of revenue generation and consolidating local and central power position. One communal property right system, called *kipat*, in Eastern Nepal survived until the 1960s when it was abolished by converting lands to state property (Tamang and Singh 2004). Ranas, who ruled Nepal for over a century until 1951, developed various tenurial systems such as *jagir*, *jhara*, *rakam* and *birta*, under which government distributed large areas of land, forest and non-forest, to its servicemen and local functionaries as remuneration, reward or emolument. A large part of the country was converted to individual private property and up to three-fourths of forests in the Terai were privatized by the members and relatives of ruling families as tax-free grants by the state (Regmi 1988). The tenure systems in agricultural land were very exploitative of the local peasantry. Local elite as revenue collectors were given tenurial rights, and the local elite sub-contracted land to people on rent, sometimes as much as three-quarters of yield. Ranas invited and settled landlords from India to clear large areas of Terai forests in order to generate revenue. Demand for timber in India for railways infrastructure became a boon for the rulers, but a cause of severe deforestation in the Terai.

Adhikari *et al.* (2007) shows that the introduction of CF in Nepal has not directly adversely affected people's livelihood options; rather people have adjusted their strategies such as increased farm forest. Malla (2000) also points out that, with the improvement in forest condition, there are now prospects for increasing the quota or lifting restrictions on collection of forest resources such as firewood. The CF

programme has enabled participation of the people who otherwise would not have had opportunity to participate in decision-making process affecting their lives. Several disadvantaged groups have been able to empower themselves through participation in forest management. There are also some examples of how forest user groups have been offering special incentives to poorer families by creating favourable rules. Karmacharya *et al.* (2003), in their three CF study sites, found that poorer members were given preferential treatment. Poor families were allowed to extract ground grass to generate income through goat rearing, provided with financial assistance to buy mother goats as seed breed and scholarships to enable their children to attend school.

Studies have shown that Leasehold Forestry (LF) has been very successful in restoring the forest cover in degraded forestlands and also in generating household income. In most places, forests have already been converted to secondary forests. Unlike CF, the LF programme is supported by multiple agencies such as the Department of Forest, Department of Livestock Services, etc. and is run as an integrated programme. Improved forest forage and fodder support income-generating activities of small farmers such as goat rearing. Studies on LF have shown improvements in livelihood such as food deficient months of the users decreased and various small income-generating enterprises were established. Nagendra *et al.* (2005) found that users in their various study sites have been able to significantly improve forest biodiversity and biomass level. However, they also identified some problems in the implementation of the LF programme which had constrained the progress in many cases.

Besides CF and LF, the government has initiated a new forest management regime known as Collaborative Forestry in Nepal, which is primarily based on the benefit-sharing principle as applied in JFM in India. This system is still in pilot stage, but preliminary observations indicate that community people do not feel secure in terms of tenure rights as limited authority is devolved to local communities.

PHILIPPINES

After the enactment of the Executive Order 263 in 1995, the government of the Philippines adopted Community Based Forest Management (CBFM) as a reformed tenure system in the upland. The allocation of forests to communities through CBFM agreements has made it possible to transfer natural resource assets to marginalized groups in response to demands for social justice, equity and livelihood. Among the different tenure systems, the CBFM seems to have the greatest potential for supporting livelihood, providing farm-level incentives to adopt agro-forestry and tree farm technologies, and raising marginalized communities out of extreme poverty. Under the CBFM, there is a provision for another tenure system known as Certificate of Stewardship Contract (CSC), which allows individual households to secure certain patches of forest land for their livelihood for 25 years, renewable for another 25 years. The Decentralization Act of 1989 has transferred some roles of forest management to the Local Government Unit (LGU), which helped to increase the participation of provincial and municipal government units in the CBFM. However, so far the real potential of this system has yet to emerge from several constraints. As well as the limited capacities of communities to absorb, learn and respond to their obligations as forest managers, highly restricted access to timber and non-timber as sources of revenue risk causing the gradual abandonment of most forest lands over time (Dahal and Capistrano 2006, FAO 2006).

Despite being interpreted as a radical change in the forest tenure situation, studies have shown that devolution in the forestry sector is incomplete and this sector has strategic weaknesses (Dahal and Capistrano 2006). Dahal and Capistrano (2006) finds that the Department of Environment and Natural Resources (DENR) still controls devolved power through some policy provisions that make them final decision-maker. This led the programme officers to depend on and be accountable to the DENR as final decision-maker of micro operational issues. Similarly, the 25 years of CSC with no guarantee of further renewal is a disincentive for people to plant and conserve forest resources. Carino (2004)

points out some confusion surrounding the overlapping of land tenure and land use. It has pointed out that what is considered as forestland in record may be agricultural land in actual use. Similarly, what are considered watershed areas in record may be vegetable farms in actual use.

LESSONS AND CONCLUSION

Some of the country cases on tenure models in Asia show that clear, secure and devolved forest tenure is a fundamental requirement for addressing people's livelihood, improving forest condition and ensuring sustainable forest management. Most current policies and legal frameworks in many countries in Asia still continue to limit access to forest resources. The forestry sector appears to have made less progress on this issue than other natural resources sectors, and still provides a largely inadequate institutional framework to address the security of tenure rights. Evidence shows that tenure arrangements that provide tangible rights to local users are conducive to ecological protection and livelihood improvement. In order to make the tenure reform successful, there is an urgent need for establishing supportive legal frameworks and capable institutions, as well as for increasing participation of multi-stakeholders in the management of forest resources.

The implementation of reformed forest tenures has shown promising signs in many countries in Asia. The new system was superior to previous state and market controlled regimes in many respects. With continuous learning, reformed forest tenures are being gradually improved and institutionalized. However, there are also some urgent strategic weaknesses which call for improvement. The first and foremost need is the enhancement and guarantee of tenure security of those who already exercise partial rights. The customary or use rights of those who do not exercise partial rights should be recognized or rights to forest management should be devolved by expanding the success of the present programmes to a maximum extent. Inconsistent institutional and legal barriers are to be removed and supportive institutional mechanisms strengthened. In order to maximize the potential of generating benefit of the systems to the people, focus

should shift to maximizing livelihood and income potential and equity in distribution. Community-based forest management programmes are to be complemented with integrated support mechanisms ranging from credit support to commercial production and marketing mechanisms. Such mechanisms should preferably be targeted so as to enhance the representation of and maximize benefits to the poorest and disadvantaged communities, while minimizing the space for elite capture. Hence, tenure security would mean less restriction to those who have been disadvantaged due to restricted access to, and use of, forest resources.

Based on the tenure reform experience from the South and South East Asian countries, it is commonly agreed that the tenure reform process should continue and be enhanced to achieve sustainable forest management, address people's livelihood and maintain equity in the community. However, to increase effectiveness of forest tenure reform in Asia, cross-country sharing of reform experience is critically important, where the good practices and approaches could be scaled up.

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